

AMENDED IN ASSEMBLY JULY 2, 1997

AMENDED IN SENATE JUNE 3, 1997

AMENDED IN SENATE MAY 20, 1997

AMENDED IN SENATE APRIL 17, 1997

SENATE BILL

No. 776

Introduced by Senators Johannessen and Hughes
(Coauthors: Assembly Members Campbell, Morrow, Oller,
and Woods)

February 26, 1997

An act to add Section 14661 to the Government Code,
relating to state property.

LEGISLATIVE COUNSEL'S DIGEST

SB 776, as amended, Johannessen. State property:
design-build.

Existing law requires the Department of General Services
to perform various functions and duties with respect to state
property.

This bill would authorize the Director of General Services
when authorized by the Legislature to use the design-build
procurement process for a specific project, notwithstanding
other provisions of law, to contract and procure state office
facilities, other buildings, structures, and related facilities
pursuant to these provisions. This bill would require the
director, prior to contracting for the procurement of state
office facilities and other state buildings and structures, to
prepare a program setting forth the scope of the project and

to establish a competitive prequalification and recommend to the Legislature a selection process for design-build teams. This bill would provide that when a design-build procurement process is selected, the listing requirements of the Subletting and Subcontracting Fair Practices Act shall not be required, but the Director of General Services shall require the design-builder to provide reasonable notice of the availability of work to be subcontracted and to bid that work on a competitive basis. *This bill would require any design-build team that is selected to design and build a project pursuant to these provisions to possess or obtain sufficient bonding to cover all risks and liabilities associated with the project.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares
2 that it is in the best interests of the state to construct state
3 office and other facilities in a cost-efficient manner that
4 represents the best overall value to the taxpayers. In
5 order for this goal to be accomplished, state agencies need
6 to be able to use the best possible project delivery
7 procurement systems.

8 (b) The Legislature finds and declares that the
9 design-build process can be an attractive option to a
10 public entity in comparison to the existing three-step
11 (design-bid-build) process. The design-build process can
12 improve the project delivery process by accelerating
13 delivery schedules and saving costs by promoting
14 improved coordination between contractor and
15 architect, shifting management risk from the public
16 entity to the design-build team, and minimizing change
17 orders through early collaboration between design and
18 construction disciplines.

19 (c) The Legislature has recognized the merits of the
20 design-build procurement process in the past by
21 authorizing its use for projects undertaken by the
22 University of California, joint-venture public school
23 projects, specified local government projects, and several



1 state office buildings under construction in Oakland, San
2 Francisco, and Los Angeles. The design-build
3 procurement process has also been approved for use by
4 public entities in other states, as well as the federal
5 government.

6 (d) Therefore, it is the intent of the Legislature in
7 enacting this act to define the design-build construction
8 procurement process for state facilities to establish the
9 parameters for its use when the Legislature authorizes
10 the Director of General Services to use this process for a
11 specific project that involves the construction of state
12 office and other facilities.

13 (e) In addition, it is the intent of the Legislature that
14 the full scope of design, construction, and equipment
15 awarded to a design-build team shall be budgeted in a
16 single funding phase.

17 SEC. 2. Section 14661 is added to the Government
18 Code, to read:

19 14661. (a) Notwithstanding any provision of the
20 Public Contract Code or any other provision of law, when
21 the Legislature authorizes the use of the design-build
22 construction procurement process for a specific project,
23 the Director of General Services may contract and
24 procure state office facilities and other buildings,
25 structures, and related facilities pursuant to this section.

26 (b) For purposes of this section, “design-build” means
27 a procurement process in that both the design and
28 construction of a project are procured from a single
29 entity.

30 (c) For purposes of this section, “design-build team”
31 means a partnership, corporation, or other legal entity
32 consisting, at a minimum, of a licensed general contractor
33 and either a licensed architect or registered engineer. ~~A
34 licensed general contractor may constitute a design-build
35 team pursuant to this subdivision if the contractor
36 subcontracts for, or otherwise provides, the services of a
37 licensed architect or registered engineer.~~

38 (d) Prior to contracting for the procurement of state
39 office facilities and other state buildings and structures,
40 the director shall:

1 (1) Prepare a program setting forth the scope of the
2 project that may include, but is not limited to, the size,
3 type, and desired design character of the buildings and
4 site, performance criteria covering the quality of
5 materials, equipment, and workmanship, or any other
6 information deemed necessary to describe adequately
7 the state's needs. The performance criteria shall be
8 prepared by a design professional duly licensed and
9 registered in the State of California.

10 (2) Establish a competitive prequalification and
11 selection process for design-build teams that clearly
12 specifies the prequalification criteria as well as
13 recommend the manner in which the winning bidder will
14 be selected.

15 (A) Prequalification shall be based upon criteria that
16 shall include, ~~but are not limited to,~~ the management
17 qualifications, financial capability, and relevant work
18 experience of the design-build teams and their members.

19 (B) The director, as he or she deems to be in the best
20 interests of the state, shall recommend to the Legislature
21 one of the following methods as the process to be used for
22 the selection of the winning bidder:

23 (i) A design competition based upon an approved
24 budget.

25 (ii) A competition based upon maximum project
26 benefit for the lowest price.

27 (iii) A competition based solely upon price.

28 (C) The legislation providing final authorization to
29 construct a specific project using the design-build
30 construction procurement process shall specify the
31 method for the selection of the winning bidder.

32 (e) For purposes of this section, "best interests of the
33 state" shall mean a design-build process that is projected
34 by the director to reduce the project delivery schedule
35 and total cost of a project while maintaining a high level
36 of quality workmanship and materials, when compared to
37 the traditional design-bid-build process.

38 (f) It is recognized by the Legislature that the
39 design-build entity is charged with performing both
40 design and construction. Because a design-build contract

1 may be awarded prior to the completion of the design, it
2 is impracticable for the design-build entity to list the
3 subcontractors at the time of award. Therefore, the listing
4 requirements contained in Chapter 4 (commencing with
5 Section ~~6100~~ 4100) of Part 1 of Division 2 of the Public
6 Contract Code shall not be required when the
7 design-build procurement process is selected. However,
8 the Director of General Services shall require the
9 design-builder to provide reasonable notice of the
10 availability of work to be subcontracted, including the
11 date on which the work will be awarded, and to bid the
12 subcontracted work on a competitive basis *in accordance*
13 *with Chapter 4 (commencing with Section 4100) of Part*
14 *2 of Division 2 of the Public Contract Code. Nothing in*
15 *this subdivision shall prohibit a design-builder from*
16 *awarding subcontracted work in phases.*

17 (g) This section shall not be construed and is not
18 intended to extend or limit the authority specified in
19 Section 19130.

20 (h) *Any design-build team that is selected to design*
21 *and build a project pursuant to this section shall possess*
22 *or obtain sufficient bonding to cover all risks and*
23 *liabilities associated with the project. Nothing in this*
24 *section shall prohibit a general contractor from being*
25 *designated the lead entity on a design-build team for the*
26 *purposes of purchasing necessary bonding to cover the*
27 *activities of the design-build team.*

28 (i) *Any payment or performance bond written for the*
29 *purposes of this section shall use a bond form developed*
30 *by the Department of General Services.*